The Solicitors' Journal and Weekly Reporter.

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GENERAL HEADINGS.

Cases Reported this Week.

Current Topics.

Registration Appeals.

THE Registration Appeals Rule, which we printed in draft last week (*ante*, p. 704), has now been issued without alteration as a final rule, dated 31st July. It came into operation on 1st August.

Increase of Costs.

THE INCREASE of costs in the High Court has been effected by the new rule 10A to R.S.C., ord. 65 (*ante*, p. 550). We print elsewhere an addition to this rule which extends it to arbitrations, and to Crown proceedings, except criminal proceedings. The authorized increase of twenty per cent. is by no means excessive having regard to the increase of charges in other directions. The corresponding county court rule will be found *ante*, p. 669; and in bankruptcy and winding-up, *ante*, pp. 683, 684. The latter rules—bankruptcy and winding-up—have now been issued in final form. In the winding-up rules, as printed *ante*, p. 684, "chargeable," in line 5 from the bottom of r. 1, now reads "charged."

The New Categories.

THE National Service Ministry has just announced the joint decision of the War Office and itself in connection with the vexed question of the medical categories into which men of new military age are to be classified. A provisional arrangement was made by which men over forty-three were to be classed 1 (B), 2 (B) and 3 (B), respectively; but, as pointed out in these columns, this qualification of the category by adding the letter (B) made no real alteration; it only informed the tribunal that the man was over forty-three, a fact they knew already from his papers. In addition, there is the difficulty that, once in the Army, the medical officer may raise a man's category as he pleases, the Ministry of National Service having no further control after the man has been sent to a reception depôt of the Army, Navy or Air Force, as the case may be. The new scheme gets over both these difficulties. Moreover, it applies to a much greater number of men—in fact, to every man who attained the age of forty (not forty-three) before 18th April, 1918, and who has become a statutory reservist or has enlisted voluntarily since that date. Such men are to be classed B, and divided into three grades—B 1,

B 2, and B 3. Moreover, the War Office has agreed that they shall not be transferred to any other category than B after being handed over for service. B men will not be employed on duty in the trenches; but will be available for garrison, labour, or sedentary service abroad, and for field, garrison, labour, or sedentary work at home, according to their category.

Solicitors and "Poor Persons" Cases.

In the case of a solicitor who was on 12th July suspended from practice for three years, it was found by the Committee of the Law Society that he had systematically obtained from "poor persons," to whom he had been assigned as solicitor, sums of money for costs and expenses in proceedings for which no corresponding payments were made by him. The rule as to taking money in such cases is r. 29 of R.S.C., ord. 16. This rule excuses a "poor person" from court fees, and no "fee, profit or reward" can be taken from him either for the inquiry into and report on his case, or for the conduct of the proceedings. But there is this proviso:—

> "Provided that nothing contained in this rule shall preclude any solicitor from receiving either from the poor person or out of any fund which may from time to time be approved by the Lord Chancellor the payment of the out-of-pocket expenses of any solicitor."

In the case in question it appears that the solicitor had charged a certain proportion of his office expenses as "out-of-pockets," and such a practice is countenanced by what is stated in the Annual Practice (1918 edition, p. 269) as to the rule in the House of Lords. There, three-eighths of the solicitor's ordinary profit charges are allowed to be charged as expenses, and it is said that the same rule was followed in the Probate Division before the Poor Persons Rules. Whether under the special circumstances of poor persons procedure such a charge should be allowed may be open to question. The answer depends on whether a case of this nature is regarded as part of the normal work of the office, so as properly to bear its share of office expenses, or whether it is exceptional and altogether gratuitous. But, as Mr. Justice Shearman observed, any doubt should be set at rest by express provision. The same learned Judge, who was sitting with Bailhache and Salter, JJ., called attention to the difference between the procedure under these rules—all and sundry being allowed to offer themselves as advisers—and the Scotch system, under which a small number of lawyers are appointed to act for poor persons. It is regrettable that the present case has occurred, but it would be premature to say that it shews the necessity for a change; though possibly a certain discretion in admitting solicitors to the lists kept under r. 23 might be vested in the "prescribed officers" under 31 E—*i.e.*, in the Chancery and King's Bench Divisions, the masters, and in the Probate, Divorce and Admiralty Division, the registrars, nominated for the purpose. But it is not apparent how, without special and troublesome inquiry, they could exercise such a discretion.

Agricultural Wages.

We have not had an opportunity at present of noticing the very interesting Report issued recently by the Ministry of Reconstruction on Agricultural Policy. It is the Report of a Sub-Committee of the Reconstruction Committee appointed in August, 1916, with Lord Selborne as chairman, to consider and report upon the best methods of increasing home-grown food supplies in the interest of national security. The first report, which was issued in January, 1917, recommended the establishment of wages boards and minimum wages, and the guaranteeing of a minimum price for wheat and oats, and this has been carried into effect by the Corn Production Act, 1917. The second report recommends extensive reforms in agricultural administration and organization, and has a valuable historical preface by Mr. Alexander Goddard, one of the secretaries to the Sub-Committee. We hope to give an account shortly of the proposed changes; but our readers will have noticed, both from the daily Press and from our own notes under "War Orders," that the Agricultural Wages Board is rapidly putting into operation the provisions for minimum wages and overtime rates contained in the Act of 1917. The details of the numerous Orders which are being made are only interesting locally, but attention may be called to a proposed Order in regard to the "benefits or advantages" which may rank as payments in lieu of cash; section 12 (1). These are to be defined to include the occupation of a cottage held under the employer, "except where the cottage is one in regard to which the medical officer of health has reported that it is in a state so dangerous or injurious to health as to be unfit for human habitation." The value is to be reckoned as three shillings a week, less any rent or rates which may be paid by the occupier. There are further provisions which it is unnecessary to specify. The expression "cottage" is to be taken to include a garden given or leased with the cottage. The Corn Production Act appears to be more effective in protecting the interests of the labourers than of the farmers; for though minimum prices for wheat and oats are guaranteed, and rents are not to be raised in consequence, yet, as Mr. Dowding pointed out in his letter last week, there is no protection against the termination of yearly tenancies.

Equities in the Divorce Court.

The maxim "He who seeks equity must do equity" is familiar in the Chancery Court, but is not quite so often applied in the Divorce Court. But in a recent case, *Wickens* v. *Wickens* (*ante*, p. 702), the Court of Appeal applied it—or at any rate the broad principle of natural fairplay which it conceals beneath a phrase—to a matrimonial case. A wife had obtained against her husband an order for the restitution of conjugal rights; this, of course, he disobeyed, as the petitioner anticipates in such cases. He then obeyed the usual order for alimony against him. Next there followed certain proceedings between the parties which ended in the husband proving the wife's adultery at the trial; the Court found that her adultery was habitual, and without palliative of any kind. In these circumstances must the husband continue to make the periodical payments ordered him to a wife who is living in flagrant unchastity? The Court held that this is a question which must turn on the facts of each case; the Judge has a discretion to review the order for alimony and suspend it unless and until the wife abandons her life of unchastity. The obvious equity of such a decision can hardly be disputed. An order for alimony under a decree of restitution is intended as a means of supporting a deserving wife, not as a right of property vested in an undeserving woman.

Negligence of an "Agister."

"Agistment" of cattle is a quaint and archaic species of the contract of bailment; bailment is itself a somewhat archaic kind of contract; and negligence by a bailee is one of the vaguest and least explored branches of the law of torts. One is carried back to Smith's Leading Cases and to *Coggs* v. *Bernard* in every court argument upon it. The Divisional Court had quite an interesting little agistment case before it in *Goldman* v. *Hill* (*ante*, p. 705). Cows "agisted" with the defendant by the plaintiff were stolen, and their disappearance was reported to the defendant. He assumed that the plaintiff had taken them away, for the plaintiff had already taken away one cow with its calf, and had talked of taking away two more so soon as they should have calves. Therefore he informed neither the police nor the owner of the loss. The latter sued him (1) for *detinue* of the cows—a not very plausible ground of action—and (2) negligence of the defendant in his capacity of bailee. But what could be the nature of the negligence alleged? Negligence by a bailee must consist in neglecting some reasonable precaution for the safety of the bailed chattels; he is not an insurer of their safety, bound to keep them at his peril. But there was no such neglect of precautions. It was, however, ingeniously suggested that the cows might have been recovered if he had notified the loss. The answer is threefold: (1) he was under no duty to notify the loss; (2) he had not acted unreasonably in assuming that the owner had removed the cows himself; and (3) in any

event the damage was much too "remote." And so judgment was entered for the defendant.

Deviation by Warehousing.

A QUITE unique point, we imagine, in the law of affreightment was that which came before the House of Lords early last month in *Attorney-General* v. *Benjamin Smith & Co.* (*ante*, p. 701). The Government had requisitioned a ship for war service, but continued to carry the goods of traders to London "*via* ports subject to Government requirements," under contracts contained in bills of lading. There was in these bills an exception that the Crown was *not* to be liable if the goods were lost by "act of the King's enemies." As a matter of fact, in the course of the voyage, the Government found it convenient to use the ship as a store for frozen meat for the supply of troops in Gallipoli. While proceeding to London after fulfilling this function for a time the ship was torpedoed, and the Government refused to accept liability for the goods thus lost on the ground that they were lost by an event purely the act of the King's enemies. Clearly the peril is within the meaning of that term. Therefore, if the contract still held good, the exception applied, and barred the shippers' claim. But was the contract of affreightment still valid? The Government had used the ship as a store, whereas their contract was to use it for transporting goods, although they had taken powers to vary the route so as to suit their own war requirements. An ordinary deviation, then, would be authorized, and would not bar the contract. But an unauthorized deviation *always* invalidates a contract of affreightment: *Glynn* v. *Margetson* (1893, A. C. 351); *Morison* v. *Shaw, Savill & Albion (Lim.)* (1916, 2 K. B. 783). The question, therefore, narrows itself down to this, Was the use of the ship as a store ship for an intermediate part of the voyage period a "deviation" from her route, and, if so, was it "authorized" or "unauthorized"? The House of Lords held that it was an "unauthorized deviation," and, in accordance with the well-understood principle explained in the two leading cases we have just cited, held that it annulled the charter-party with its exceptions. The common law liability of the carrier was restored, and this extends to "acts of the King's enemies," as well as to other perils of the sea.

"The Merry Inn."

WE SOMETIMES wonder why the great poet of the Victorian era spoke of "the dusty purlieus of the law." To the dwellers in the Inns of Court the law is associated rather with full-fledged trees and verdant lawns—or at least lawns that were verdant before the O.T.C. appropriated them to military uses. And we have read with interest the article in the *Times* of 30th July, in which under the title of "The Merry Inn," a correspondent compares the Gray's Inn of the present—subdued in tone and hospitality—with the Gray's Inn of the famous Elizabethan tradition—the Gray's Inn of which "CHRISTIAN TEARLE" writes:—

> "Homage to the old foundation, learnèd, reverend and fair;
> Merry, too, in bygone seasons as its chronicles declare!
> O, the Hall was full of feasting—masque, or revel, or carouse—
> When it stood amid the meadows, overlooking Ely House!"

The meadows have gone, never to return; but the gardens remain, forming one of the oases which the law preserves for central London—oases which are a tangible sign that the law stands for what is fairest in the State, the rule and order of progressive social life.

The Care of Horses.

THE Joint Committee of the Board of Agriculture and Fisheries and the Ministry of Food have issued a leaflet with regard to the Parasitic Mange Order, 1911. Under this Order every person in Great Britain having in his possession or under his charge a horse, ass or mule affected with or suspected of parasitic mange is required to give notice of the fact with all practicable speed to the police. Failure to give such notice renders a person liable to a fine of £20, and, in certain circumstances, to a month's imprisonment. It is stated in the leaflet that the information obtained by the Board from enquiries made in connection with the many outbreaks of mange reported to local authorities shows that the disease is very prevalent at present, and, though the disease is not of a nature which need alarm horse owners, it is highly desirable that every possible means should be taken to prevent animals becoming affected with parasitic diseases, and to cure them promptly if found affected. The Order of 1911 has been amended by an Order of 1918, and the effect of the two Orders is that an affected animal may be worked subject to certain conditions. Either by recourse to their own veterinary surgeon or by the assistance to be obtained through the police, horse-owners can consult their own interests and also comply with the Orders. Attached to the leaflet will be found rules to be followed for the prevention and cure of the disease. Copies of the leaflet and rules can be had free on application to the Secretary of the Joint Committee, 6A, Dean's-yard, Westminster, S.W. 1.

The Development of German Prize Law.

By CHARLES HENRY HUBERICH, J.U.D., D.C.L., LL.D., of the United States Supreme Court Bar; and RICHARD KING, Solicitor of the Supreme Court, London.

VII.

UNNEUTRAL SERVICE.

THE provisions of the Prize Code, arts. 48-56, relating to unneutral service, were originally identical with those contained in the Declaration of London, arts. 45 and 46. A sweeping modification was made by the Ordinance of 16th July, 1917,[1] which amended par. (c) of art. 55, so as to provide that a neutral vessel shall be regarded as rendering unneutral services to the enemy:—

> If she is chartered by the enemy government or is navigating in the interest of enemy warfare.
>
> Unless the facts shew to the contrary, a vessel shall be regarded as navigating in the interest of enemy warfare when voyaging from or to enemy territory, or territory in the occupation of the enemy, under charter to an enemy subject, or to a person residing in an enemy country, or to a person shewn to have rendered services as an agent for an enemy government during the present war.

SEIZURE OF NEUTRAL CARGO ON ENEMY VESSELS.

Art. 110 of the Prize Code provides:—

> In case of need, H.M. ships, and the war vessels of an allied state and captured vessels, may take portions of the cargo, equipment and stores of captured enemy vessels to supply such needs, in so far as the goods taken are not unquestionably neutral property.

In *The Indrani*,[2] bunker coal and other coal carried as cargo on an enemy vessel was taken by the captor. It was afterwards shewn to be neutral property and compensation was allowed.

DESTRUCTION OF VESSEL AND CARGO.

Regarding enemy vessels, art. 112 of the Prize Code provides:—

> The commander may make use of an enemy vessel captured . . . as an auxiliary vessel, or, if the bringing in of the vessel appears to him to be inappropriate (*unzweckmässig*) or unsafe, may destroy the same.[3]

There is here no question of compensation for the vessel.[4] As

[1] Reichsgesetzblatt (1917), 631.

[2] Hamburg Prize Court, 3rd July, 1915. See also art. 9, providing that: The commander may not, without the consent of the parties interested, requisition a vessel or goods not subject to capture or seizure, even if payment is made.

[3] See also art. 1.

[4] *The Glitra*, Superior Court of Prize, 17th September, 1915; *The Indian Prince*, Superior Court of Prize, 15th April, 1916.

enemy goods on board an enemy vessel are subject to condemnation,[5] and may be destroyed,[6] there is also no question of compensation as to such cargo.

A more difficult question arises as to neutral cargo on board such vessels.[7] The leading case is *The Glitra*,[8] where the Superior Court of Prize, affirming the decision of the Hamburg Prize Court,[9] held that the neutral owners were not entitled to compensation:—

> The question is whether, in the case of the legal destruction of a hostile ship, compensation is to be made for the goods of neutrals which are lost with the ship. It is clear that an express instruction upon this point is contained neither in the Prize Code nor in the Declaration of London. But the Prize Code does not state anything about it even indirectly. The claimants seek to find such an instruction in art. 114 of the Prize Code. The judge of the lower court was right in rejecting this contention, even if his reasons are not always to be agreed with. The commander is therein instructed, before he decides upon the destruction of a ship, to consider whether the injury to be done to the enemy balances the compensation to be paid for the destruction of the innocent portion of the cargo. [The Court discussed this article, and proceeded:] Even supposing that the compiler of the Code was of the opinion that, in the case of the legal destruction of a hostile ship, claims for compensation could be sustained for neutral goods, it would be incorrect to regard his opinion as a definitive decision of this at least doubtful, and at any rate disputed, but still open question.
>
> As Wehberg correctly points out, Heilfron goes too far when he wishes to give to the Prize Code the importance only of a command given by the Kaiser to the commanding officers of the navy. The Prize Code contains to a great extent substantive law. But with regard to the precise question under dispute, Heilfron's characterization is correct. This article (114) is, indeed, only a command to the commanders of men-of-war. The Commander-in-Chief, but not the legislator, speaks. He does not desire to make substantive law, and does not do so.
>
> Thus obliged to revert to the most general legal principles in connection with the general laws of war, it is absolutely evident that a claim in favour of the neutrals does not exist, if the destruction of the prize was justified by the circumstances. (Art. 112, Prize Code.)
>
> The seizure and capture of hostile ships is an admissible act of war against other states which is sanctioned by international law. Claims for compensation either from members of hostile or neutral states cannot arise in every case. It is true that, according to art. 3 of the Declaration of Paris, neutral property (which is not contraband) cannot be seized even on hostile ships. Therefore, it is not even liable to seizure if the ship is brought into port. But there can be no question of the parties interested in the cargo having a claim for compensation on account of the injury caused by the seizure of the ship, the interruption of the voyage, or the conveyance to a different destination than the one intended. There is also just as little claim for compensation if the goods themselves suffer injury in consequence of the seizure of the ship; for instance, if on account of an accident they are lost during the subsequent voyage of the prize. Since seizure is a legal act, there is no legal basis whatever upon which to found an injury to the goods, which the neutrals have, moreover, themselves caused by entrusting their property to an endangered ship. Therefore, since seizure is a legal act of war, there is no legal basis for establishing the injury to the goods, even if they are lost through an act of war directed against the ship when owing to the circumstances such an act must necessarily also be directed against the cargo.
>
> The legal question which here arises can also arise under the conditions of land warfare. It can and frequently does happen, for instance, during the bombardment of a fortified or defended place, that the property of neutrals also suffers injury. But even in land warfare, in which private property is much more protected than in war at sea, there can be no question in such a case of a liability on the part of the belligerent States to indemnify the neutrals. Compare Article 3 of Convention IV. of the Second Hague Conference; Geffcken by Heffter, Völkerrecht, sec. 150, note 1 (incorrect, at least insufficient, *viz.*, the text by Heffter): Calvo, Droit international, IV., 2250-2252; Bonfils, Völkerrecht, 1217; Bordwell, Law of War, 212.
>
> In regard particularly to the conditions of naval war, however, art. 3 of the Declaration of Paris gives protection, neither in general nor specifically, to neutral property against the actions of the belligerents due to the necessities of war. The purpose of art. 3 of the Declaration of Paris was to extend protection to neutral property in an enemy ship which, under the prize law as it existed prior to the Declaration, was subject to capture. What the necessities of war demand must be allowed to take place, whether neutral property is on board the ship or not. If, according to art. 2 of the Declaration of Paris, the neutral flag protects enemy property, this does not mean that, *vice versa*, neutral property protects the enemy ship, and protects it, indeed, not only against destruction, but also in many cases against every exercise of prize law.
>
> As far as can be seen up to the most recent time, no one has ever disputed this holding. Compare Entsch. des franz. Conseil d'Etat of 21st May, 1872, in III Dalloz, Jurisprudence generale (1871), No. 94, in the prize case of *The Ludwig and Vorwaerts*; Dupuis, Le droit de la guerre maritime (1889), 334; de Boeck, de la propriete ennemie privee sous pavillon ennemie, § 146; Bordwell, Law of War, 226; Wheaton, International Law, 4th ed., 507, § 359e; II. Oppenheim, International Law, 201 *et seq.*; V. Calvo, Droit International, 3033, 3034; Hall, International Law, 5th ed., 717 f.
>
> The claimants' assertion that the decision of the French Prize Court in the case of *The Ludwig and Vorwaerts* was almost universally attacked in literature, has, apart from the quotations from the recent literature (Wehberg and Schramm; the quotation from Hall, p. 187, see above, is incomprehensible), remained unproved and must be regarded as incorrect. Only very recently, especially in Germany, has there developed the theory that generally, in the case of the destruction of innocent goods, the highest principle prescribes the obligation of granting compensation absolutely or in so far as innocent goods may have been destroyed, and absolutely or in so far as neutral goods may have been destroyed. Compare, Schramm, Prizenrecht, 538 f; Wehberg, Seekriegsrecht. 297, Anm. 3 & 4, and Osterr. Zeitschrift für offentliches Recht, *op. cit.*; Rehm, Deutsche Juristenzeitung (1915), 454.
>
> In consequence, the general obligation of granting compensation is regarded as a foregone conclusion, without giving any reason to support it, and when it is subsequently attempted to bring forward a reason, it does not, when compared with the foregoing arguments, appear convincing. Even the argument that land warfare must be confined locally to the territories of the belligerents while the ship may sail over the wide seas, cannot alter the finality of the latter conclusion. An enemy ship is subject to attack and eventually to defeat everywhere on the high seas in conformity with the perhaps regrettable, but nevertheless, valid state of international law. Finally, as soon as a ship enters the high seas, she becomes a portion of the territory of her state, into which the neutral having loaded his goods on board a belligerent vessel for the purpose of conveying them over the sea, has brought them of his own free will.[10]

The view announced in *The Glitra* is not opposed to the provisions of arts. 9 and 110 of the Prize Code, as these deal merely with the requisition of the cargo, not with its destruction.[11]

[*To be concluded.*]

5 Prize Code, arts. 18, 19.

6 Prize Code, art. 120.

7 Art. 120 of the Prize Code provides: If the commander releases a captured enemy vessel (see art. 112), or determines not to proceed to a capture, such portions of the cargo as are subject to seizure under articles 19 and 56 may be destroyed.

8 17th September, 1915.

9 29th January, 1915.

10 Accord., *The Durward*, Hamburg Prize Court, 3rd July, 1915.

11 *The Bowes Castle*, Hamburg Prize Court, 3rd July, 1915.

Correspondence.

Hulme v. Ferranti (Limited).

[*To the Editor of the Solicitors' Journal and Weekly Reporter.*]

Sir,—With reference to the report of this action which appeared in the SOLICITORS' JOURNAL for 13th July last, page 668, we notice in the eighth line of the report you refer to the strike at the defendants' works as having taken place from the 3rd to the 11th May, 1918. The strike was in May, 1917, not in May, 1918. If the strike had been in May, 1918, the Munitions of War Act, 1917, would have applied to this case, but the point was that this Act did not apply. Section 3 provides that if the provisions of section 7 of the Munitions of War Act, 1915, are repealed by an Order under this Act (and they were), a contract of service between an employer and a workman shall, notwithstanding any agreement to the contrary, not be determined except by a week's notice. So this Act, passed after the cause of action arose, provided for the week's notice that the plaintiff in this case was contending for, and this direct enactment as to a week's notice shews that no such notice was incorporated in an agreement of service before this last amending Act.

SKELTON & Co.

90, Deansgate, Manchester, 27th July, 1918.

[We are obliged for our correspondents' correction.—ED. *S.J.*]

The Timber Control Order, 1918.

[*To the Editor of the Solicitors' Journal and Weekly Reporter.*]

Sir,—The ways of our officials are strange. One can understand that the Controller of Timber wants to get timber and to know where to get it. An order that, on any contract for sale of land

by private contract or public auction, notice of the contract should be given to the Timber Controller, so that he could requisition the timber, would have been simple and sensible.

But the official mind has no cell for simplicity or sense. We have accordingly an amazing Order, calculated, though doubtless not designed, to do as much mischief to the vendibility of land and to the earning power of all interested therein—solicitors, agents, auctioneers, &c.—as possible, and thereby to the State by reducing their incomes on which they pay tax.

The Timber Order of 1918, clause (10), shortly stated, declares that on all private contracts for sale of land where the timber (defined clause 11) exceeds 10,000 cubic feet, the vendor is before completion to give particulars of the timber to the Controller, and unless a permit is granted, which may be absolute or conditional, "the sale so far as it relates to the timber thereon shall be void." Clause 11 deals with sales by auction, reference to which, for brevity, I omit.

Clause 10 then puts the vendor to a timber valuation expense, with the possibility of a permit refused or conditional, and so to a possible lawsuit with the purchaser. Clause 11, dealing with sales by auction, is even more drastic.

All this that the Controller may find it a little easier to secure timber, a thing he could do without causing endless trouble and expense to those interested in land, and blocking the sales thereof.

I have not seen the Order as yet commented on in your paper. It seems a fit subject for the Land Union, the Incorporated Law Society, and the Institute of Auctioneers to take up.

29th July. LINCOLN'S INN.

[Our learned correspondent has not noticed that we called attention to the Order and printed the chief parts of it, including the clauses to which he refers, last week (*ante*, pp. 695, 706); but we are glad to have attention further called to the matter, since it is of great importance to vendors and purchasers of country estates.—ED., *S.J.*]

CASES OF LAST SITTINGS.

House of Lords.

REID, HEWITT & CO. *v.* JOSEPH. 30th, 31st May; 4th June "5th July.

PRACTICE—COSTS—TRIAL BY JURY—GOODS SOLD—DEFENCE AS TO PART OF CLAIM ONLY—PAYMENT INTO COURT OF BALANCE—GENERAL COSTS OF ACTION—COSTS OF ISSUE—R.S.C., ORD. LXV., RR. 1 AND 2.

An action was brought by the respondent against the appellants to recover £169 14s. 2d., the balance of a quantity of goats' hair sold and delivered. The defendants pleaded (1) *that the hair sold was not up to sample, and was worth £24 19s. 3d. less in consequence;* (2) *that there was an over-charge on the bags of £2 11s.; and* (3) *payment into court of the balance, £142 3s. 11d., after deducting those two sums. The action was tried with a jury. The plaintiff admitted that the goods were not up to sample, but the defence as to the price of the bags broke down, and the jury found a verdict for the plaintiffs for £144 14s. 11d., including the sum paid into court. Bailhache, J., gave judgment for the plaintiff for £2 11s., and his costs. The question was then raised whether the defendants were entitled to the costs incurred in respect of the question whether the goods were up to sample, as to which they had succeeded, or whether, as the plaintiff contended, those costs were included in the costs of the action.*

Held, that the defendants were entitled to the costs of the issue on which they succeeded.

Bush *v.* Rogers (1915, 2 *K. B.* 707) *and* Myers *v.* Defries (1880, 5 *Ex. Div.* 180) *discussed and applied.*

Decision of the Court of Appeal *reversed.*

Appeal from an order of the Court of Appeal affirming a judgment of Bailhache, J., on a question of costs. The facts sufficiently appear from the headnote. After consideration,

Lord FINLAY, C., in moving the appeal should be allowed, said the question was as to the effect on costs of the proviso at the end of ord. 65, r. 1, of the R.S.C. The amount at stake was small, but the question must arise in many other cases, and was therefore of importance. His lordship read rules 1 and 2 of the order, and said the points argued at the Bar were two: (1) As to the meaning of the proviso at the end of rule 1 that the costs should follow the event, and (2) whether the costs incurred on the defence as to inferiority to sample were costs of an issue, so as to entitle the party who succeeded thereon to recover these costs. On the first question, the appellant contended that the expression in the proviso to rule 1, "the costs shall follow the event" meant that a defendant who succeeded on certain issues was to have the costs of those issues, even though he had been adjudged on the while liable to the plaintiff in the action. It was conceded that, as the appellant had been found liable to pay the plaintiff in £2 11s., and had been adjudged to pay that sum and his costs to be taxed, he must pay to the respondent, as the successful plaintiff, the general costs of the cause; but the appellant denied that he was liable to pay the costs of the inquiry as to the sample on which he had succeeded, and asserted that, on the contrary, he was entitled as against the respondent to such costs as those of an issue in which he had succeeded. The respondent, on the other hand, contended that the event mentioned in the proviso was the event of the cause as a whole, and that as the plaintiff had succeeded in recovering judgment for £2 11s., he was entitled, as part of his costs, to the costs of the inquiry as to the sample. To solve this question it was necessary to follow to some extent the history of the law as to costs. Before the Judicature Acts of 1873 and 1875 the costs at common law followed the event in this sense, that, while the party who had on the whole succeeded in the action got the general costs of the action, and of any issues on which he had succeeded, the costs of any issues on which the other party had succeeded were recovered by him. Section 81 of the Common Law Procedure Act, 1852, which, in substitution for earlier provisions, allowed the pleading of several matters, provided that the costs of any issue, either in fact or law, should follow the finding or judgment upon such issue, and this was worked out by rule 62 of the Regulæ Generales of Hiliary Term, 1853, which were made under the Act, and were to be found in Day's Common Law Procedure Act (3rd Ed.), pp. 347 *et seq.* The great change made by ord. 55 of the Rules of 1875 was that the costs were put in the discretion of the Court; but an exception was made in case of trial by jury, it being provided that, in any action or issue tried by a jury, the costs should follow the event, unless the judge, for good cause shewn, should otherwise order. The object of that proviso was to preserve in jury cases the old common law rule as to costs, and undoubtedly the word "event" in that rule was used in the sense above stated. Order 55 of the Rules of 1875 was, for the purposes of the present case, identical with the rule now in force—ord. 65, r. 1. Rule 1 of ord. 65 was introduced partly in 1883 and partly in 1902, and the rule in its present form was merely declaratory of the practice in use before the rule was made. It was obvious that the word "issue" in ord. 65, r. 1, was used in its technical sense, but in rule 2 it was used in another sense altogether, and there denoted any issue arising on the pleadings in an action or other proceeding. The consideration of "issue" in this latter sense was relevant to ord. 65, r. 1, in considering the meaning of the proviso that costs should follow the event. It was established by a long line of authorities, for example, by *Myers* v. *Defries* (1880, 5 Ex. Div. 180), and *Ellis* v. *De Silva* (1881, 6 Q. B. D. 521), that the words "costs shall follow the event" in these rules meant that the costs were to be distributed according to the results of the several issues, while the party who was successful on the whole got the general costs; and apart from authority, in his lordship's opinion, the respondent's contention that these costs were included in the costs of the action was manifestly erroneous. Upon this part of the case the authorities were all one way. They all decided that the words "the costs shall follow the event" meant that the costs were to be distributed according to the results of the several issues, while the party who was successful on the whole got the general costs. The second question was whether the costs incurred on the point as to whether the goods were equal to sample were costs of an issue, so as to entitle the party who succeeded upon it to recover these costs in the absence of an order to the contrary made by the judge or court. The respondent contended that the question of inferiority to sample did not go to the whole cause of action, and for this reason it could not be an issue. It was a defence pleaded only to a portion of the plaintiff's claim—namely, £24 19s. 3d. But the defendant might plead defences, each going only to the part of the claim to which it was pleaded, and each might constitute an issue. The judge at the trial had to decide, where there were separate issues, on which of them the unsuccessful party in the action was entitled to his costs: *Bush* v. *Rogers* (1915, 1 K. B. 707); but as the question was one of law, and not of discretion, his decision would be subject to appeal. The reasons given for the judgment of the Court of Appeal did not appear to his lordship as satisfactory. He agreed with Scrutton, L.J., as to the meaning of the word "issue" as it occurred in ord. 65, r. 1. It denoted a proceeding like an interpleader issue, but that had no bearing upon the question whether there had been "issues" in the action which had been found in favour of the defendant. Upon the whole, he thought that this appeal ought to be allowed, with costs here and below.

Viscount HALDANE, Lords DUNEDIN and PARMOOR agreed in this result, and the appeal on the question of costs was accordingly allowed.—COUNSEL, for the appellants, *McCall*, K.C., *J. J. Wright*, and *G. F. Kingham*; for the respondents, *Tindal Atkinson*, K.C., and *Frank Gover*. SOLICITORS, *Jaques & Co.*, for *T. K. Greenwood & Mackrell*, Bradford; *Herbert Oppenheimer & Nathan*.

[Reported by ERSKINE REID, Barrister-at-Law.]

JOHN HALL & SONS (LIM.) *v.* EDWIN SHOWELL & SONS (LIM.) 13th June; 12th July.

SALE OF GOODS—BREACH OF CONTRACT—DAMAGES CLAIMED BASED ON LOSS OF PROFIT—EVIDENCE OF FACTS IN MITIGATION—ADMISSIBILITY.

The plaintiffs agreed to manufacture, from steel to be supplied them by the defendants, a large quantity of 18-*pounder clips required by the defendants to carry out a Government contract. In fact the defendants never supplied the steel, and the plaintiffs claimed damages for breach of contract to take delivery based on the difference between the cost to*

them of manufacturing and delivering the clips and the contract price. At the trial the defendants' counsel sought to put questions to one of the plaintiffs with a view of shewing that the mills of the plaintiffs were working full time on other contracts as profitable to the plaintiffs as the one now sued on, and that it would have been impossible for them to have made the steel clips for the defendants even if the steel had in fact been supplied them. Bailhache, J., ruled that, having regard to the nature of the contract, such evidence was irrelevant and inadmissible to the issue alone before the Court—namely, the quantum of damages, the breach having been admitted—and gave judgment for the plaintiffs for a sum which included the whole of the claim for loss of profit on the contract relating to the manufacture of the steel clips. The Court of Appeal allowed the defendants' appeal, being of opinion that the witness should not have been stopped, as his evidence might have enabled the defendants to establish that the plaintiffs had not suffered any substantial loss through the failure of the defendants to supply the steel for the clips. Accordingly a new trial was ordered. Against the order for a new trial the plaintiffs appealed.

Held (Lord Dunedin *dissenting*), *there must be a new trial.*

Appeal by the plaintiffs from an order of the Court of Appeal setting aside a judgment for £474 entered for them as the measure of damages payable by the defendants for failure to take delivery of 145,000 steel clips, and directing a new trial. The question was whether the defendants were entitled to give evidence tending to shew that the amount of damage sustained by the plaintiffs was less than the sum awarded. This evidence Bailhache, J., had ruled inadmissible. But the Court of Appeal considered it relevant to the issue of damages, and directed a new trial.

THE HOUSE, having taken time,

Lord FINLAY, C., said that the course taken by Bailhache, J., could be supported only if under no circumstances could the fact that the plaintiffs had made profits by the use of their mills be admissible in reduction of damages. He was not prepared to affirm any such sweeping proposition: see *Re Vic Mills (Limited)* (57 SOLICITORS' JOURNAL, 404; 1913, 1 Ch. 183). In affirming an order for a new trial, it was very undesirable for the Court to go into details as to the circumstances which might justify a reduction of damages on such a ground. He thought the learned Judge struck too soon. It might be that the foundation for such a reduction could not have been established in point of fact. But the defendants' counsel should have been allowed to pursue his cross-examination on the point, and might conceivably have been able to adduce relevant evidence when the case for the defendants was gone into. He was stopped too soon, and the Court of Appeal were right in thinking that there ought to be an opportunity for ascertaining the facts.

Lords HALDANE and PARMOOR read judgments to the like effect.

Lord DUNEDIN dissented. The plaintiff's case was that the damage was the profit they would have made if the defendants had not prevented them earning it. That profit was calculated by taking the price they would have received from the defendants under the contract for the goods and deducting the cost of manufacture. It was to be regretted that there was no note taken of the evidence. The House did not know exactly at what question the cross-examination of Mr. Hill was stopped by the learned Judge at the trial. For the matter of that the Court of Appeal was in no better position, and his lordship looked upon it as a cardinal rule that a new trial ought never to be granted on the ground of improper exclusion of evidence unless the Court were satisfied that the evidence tendered was relevant to affect the verdict. A general idea that, if the examination had proceeded, something might have turned up which would go to the measure of damages was not sufficient. On that ground he was bound to differ from the result arrived at by the majority of the House, although he was aware that their lordships were not deciding the question which he felt bound to discuss. Such cases as there were on this point did not support the view taken by the Court of Appeal. [His lordship referred to *Joyner* v. *Weeks* (1891, 2 Q. B. 31); *British Westinghouse Co.* v. *Electric Co.* (55 SOLICITORS' JOURNAL, 689; 28 R. P. C. 530); *Jamel v. Moolla, Dawood, Sons & Co.* (60 SOLICITORS' JOURNAL, 139; 1916, 1 A. C. 175).] The House was then called upon to decide a most important point of everyday practice. Had he presided as a judge he should unhesitatingly have come to the same conclusion as was reached by Bailhache, J. He greatly feared that from the affirmance of the judgment of the Court of Appeal two bad results would follow. It would tend to cripple the power of a judge at the trial to disallow a line of examination while not objecting to one particular question. Such a power was, in his view, most beneficial, and was an opinion formed after considerable experience as a judge sitting with juries. He apprehended also it might give rise to an attempted style of defence which would open an illimitable field of inquiry where otherwise the inquiry would be simple, and by so doing would put a weapon in the hands of those who had admittedly broken contracts to extort better terms by the fear of the expense of litigation. On the whole he was of opinion that Bailhache, J., was right in stopping the line of inquiry indicated, and that the Court of Appeal were wrong in ordering a new trial. Appeal dismissed.—COUNSEL, for the appellants, *Sir Hugh Fraser* and *R. A. Willes; Hogg*, K.C., and *H. H. Joy*. SOLICITORS, *Taylor, Hoare, & Jelf*, for *Harwards & Evers*, Stourbridge; *Sharpe, Pritchard, & Co.*, for *E. C. Newey & Son*, Birmingham.

[Reported by ERSKINE REID, Barrister-at-Law.]

Court of Appeal.

***Re* TERRY. TERRY *v.* TERRY AND OTHERS** No 1.
14th and 15th July.

CAPITAL AND INCOME—SETTLED ESTATE—PROCEEDS OF SALE OF LARCH PLANTATION—CUTTING BEFORE MATURITY—"ANNUAL PRODUCE"—"DUE AND PROPER COURSE"—SALE OF WOOD AT HIGH PRICE OWING TO WAR EMERGENCY—APPORTIONMENT OF PROCEEDS BETWEEN TENANT FOR LIFE AND REMAINDERMEN.

The trustees of a will devising real estate in trust for sale, the annual produce of the estate until sale to be deemed income and applicable as such, entered into a contract with the Controller of Timber Supplies for the sale of a larch plantation and selected larch trees at a price greatly enhanced by the needs created by the war and the cessation of imports of pitwood. The trees were of twenty-five years' growth, and in the ordinary course would not have been mature for cutting for another twenty-five or thirty years. On an application by summons for apportionment of the proceeds, Astbury, J., divided them equally between tenant for life and remaindermen. On appeal to the Court of Appeal by the life tenants,

Held, that this was at least as much as the life tenants were entitled to, and, there being no cross appeal by the remaindermen, the appeal must be dismissed.

Re Harrison (*28 Ch. D.* 220) *applied.*

Appeal by tenants for life under a will from a decision of Astbury, J. (reported *ante*, p. 652), on a summons in an administration action. The testator, who died in 1884, devised his real estate to trustees upon trust for sale, with power to postpone the sale, and declared that his trust estates should be considered as money from the time of his death, and the rents, dividends and annual produce thereof treated as income until conversion without regard to the amount of such income or the nature of the investment thereof. The will further empowered the trustees to cut timber and underwood from time to time for sale, repair and otherwise, and gave them the fullest powers (*inter alia*) of determining whether any moneys were to be treated as capital or income, and generally of determining any questions of doubt or difficulty under the will. The estate comprised farms and woodlands, and upon the testator's death administration proceedings were commenced. In 1890 North, J., made an order that the sole trustee was to be at liberty to cut and sell timber, wood or underwood "in a due and proper course," and he was ordered to pay, on the advice of the estate agent into which category the subject-matter was placed, the net proceeds of all sales of wood (other than timber not cut for thinnings) to the life tenants in equal shares as income. Part of the estate consisted of larch plantations at Stokenchurch, Bucks, and the trustees had recently contracted with the Controller of Timber Supplies, who has compulsory powers of purchase, for the sale to the Government of twenty-four acres of larch plantation for £2,900 and 1,035 selected larch trees at £875, making a total of £3,775, for the purpose of pitwood. The sale was recommended as beneficial by the estate agent and sanctioned by the Court. The larch had been planted from twenty-seven to thirty years, was of an average size of 5 to 8 inches at the butt and 30 to 40 feet in length, and would not in the ordinary course have reached maturity for another twenty-five years. On a summons to determine how the net proceeds, after deduction of £250 for replanting, should be apportioned between those entitled, Astbury, J., held that they were a "windfall" within *Re Harrison* (28 Ch. D. 220), and ordered one moiety to be paid to the tenants for life as income and the remaining moiety to be invested as capital. The tenants for life appealed.

THE COURT dismissed the appeal.

SWINFEN EADY, M.R., having stated the terms of the will and the facts, proceeded: The tenants for life contended that they were entitled to the whole of the proceeds, subject to the proper deduction of £250 for replanting. There was no cross appeal, and therefore the question whether the order did not give too much to the tenants for life was not raised. The remaindermen, who were the children of the tenants for life, were content with the order. The question, therefore, was: did the tenants for life receive at least all they were entitled to? The trees were too small for building, and of no marketable value for sawing, but were exactly the size required to meet the present demand for pitwood. According to the agent, Mr. Vernon's, evidence a higher price would be realized by cutting them down now than cutting them in due course twenty-five years hence, by reason of the exceptional circumstances created by a state of war, the urgent demand for pitwood, and the difficulty of importing it in the usual way. He advised the sale of the wood at the price agreed on. The appellants claimed that, according to the true construction of the will, they were entitled to all proceeds of sale as annual produce, that larch was not timber, and that it would not have been waste for a legal tenant for life to cut the trees. Secondly, they relied on the terms of an order made by North, J., on the further consideration of that action in June, 1890. Thirdly, it was said that the learned Judge was not entitled on any principle of law to divide the proceeds equally between capital and income, though his decision was based on a very ancient precedent. The appellants were not strictly legal or equitable tenants for life; they were entitled under the will to receive the "rents, dividends, interest and other yearly produce" of the estate. The matter was not affected by the clause in the will giving power to cut timber or underwood, as larch was neither timber nor underwood. The trustees had not thought

it to determine the question under their powers, but had left it to the decision of the Court. His lordship was of opinion that the proceeds of sale of the larches sold could not be considered to be the yearly produce of the estate. They were not like underwood or trimmings, but spinneys of larch thirty years old. Under no circumstances could the result of thirty years' growth be considered as yearly produce. Then there was the order made by North, J., on further consideration of the action. That order contained no declaration of the rights of the parties, but was simply a direction to pay from time to time until further order. Thirdly, the wood dealt with on the summons had not been cut down in a due and proper course under the liberty given to the trustees, but was the subject of a conditional contract confirmed by the Court for the sale of the whole plantation. In his lordship's opinion, assistance was derived from the case of *Re Harrison* (*supra*), where the proceeds of sale of larch plantations were dealt with by the Court of Appeal, and where a large number of trees had been blown down by extraordinary gales. The Court, as Fry, L.J., said, relied on the principle by which they endeavoured, as far as possible, to prevent both the tenants for life and remaindermen from being prejudiced by the accidental circumstances, and to give them the same proceeds as they would probably have got in the ordinary course of estate management, as if the particular windfall had not occurred. Applying that principle to the present case, and treating the sale, as it should be, as a sale under exceptional circumstances, his lordship was quite satisfied that the order of the learned judge below had given the tenants for life at least as much as they could possibly be entitled to; whether he had not given them more was a question which did not arise. Notwithstanding the able and interesting argument which their counsel had addressed to the Court, the order could not be varied in their favour. For those reasons the appeal failed.

WARRINGTON, L.J., who observed that the Court could not interpret words such as "accident" used by Fry, L.J., in his judgment in *Re Harrison*, as if it was used in a statute, and DUKE, L.J., delivered judgment to the same effect.—COUNSEL, *H. S. Preston; C. J. Farwell; Lyttleton Chubb; Bovill; W. H. Gover.* SOLICITORS, *Rose, Johnson, & Hicks; Lawrence, Graham, & Co.; Farrar, Porter, & Co.*

[Reported by H. LANGFORD LEWIS, Barrister-at-Law.]

WILLIAM WHITELEY (LIM.) v. HILT. No. 1. 24th, 25th and 26th July.

CONTRACT—HIRE-PURCHASE AGREEMENT—OPTION TO PURCHASE—SALE BY BAILEE—RIGHTS OF PURCHASER—ASSIGNABILITY OF OPTION—DETINUE—CONVERSION—MEASURE OF DAMAGES.

The plaintiffs by a hire-purchase agreement let a piano at a quarterly rent, the hirer to have an option of purchase on payment of all instalments in full, and until then to be merely a bailee. After having duly paid certain instalments the hirer sold the piano, as being her own, to the defendant, who became tenant of her flat, where the piano remained. On the plaintiffs suing the defendant in detinue and conversion, the latter paid the total balance of instalments due into court. The county court judge held this was a good defence to the action. The Divisional Court (1918, 2 *K. B.* 115) *reversed this decision.*

Held (*reversing the decision of the Divisional Court*), *that it was not open to it to find that the sale was fraudulent, and amounted to a repudiation of the agreement, but that the option of purchase was assignable, and was duly vested in the purchaser by the sale, and that the measure of damages in detinue was the balance due under the agreement which had been paid by the defendant into court. The defendant's appeal was therefore allowed.*

Appeal by the defendant from a decision of the Divisional Court (Salter and Roche, JJ.) (reported 1918, 2 K. B. 115) reversing a decision of the county court judge. The action was in detinue and conversion, being for the return of a piano and for damages for its detention. It appeared that, by an agreement made the 10th December, 1915, between the plaintiffs and a Miss Nina Nolan (otherwise Mrs. Widlake), the plaintiffs let a piano to Mrs. Widlake on the hire-purchase system, at the rate of £2 13s. 11d. quarterly, the first payment being made on signing the agreement in consideration of the option of purchase therein granted. The hirer was to keep the piano in good repair, not to remove it from the premises without the owners' consent, and to be merely a bailee of it until the full price of £32 7s. was paid. In case of any breach of the agreement the owners could enter the premises and retake the piano. By clause C if the piano were so retaken, the hirer could resume the hiring, provided she paid the arrears of hiring up to the date of re-possession and procured a guarantor to the owners' satisfaction and paid all expenses. On 3rd December, 1916, Mrs. Widlake sold the contents of the flat, including the piano, to the defendant for £100, making on the receipt a "solemn declaration" that the property was her own and no one had any claim upon it. The defendant became the occupier of the flat and the piano and furniture were not removed, but remained there. Three days after the sale Mrs. Widlake, without informing the defendant, paid a quarterly instalment under the agreement, making £13 9s. 7d. paid by her in all, leaving a balance of £18 7s. 5d. due. On discovering the fact of the sale the plaintiffs demanded the return of the piano to them. The defendant refused to give it up, and after some correspondence offered to pay them all arrears and the balance of £18 17s. 5d. as it became due, and to procure a substantial guarantee for the payment. The plaintiffs refused this offer, and sued the defendant for the return of the piano and damages in the county court. The defendant paid £18 17s. 5d. into court, and the judge held that was all that was due to them and dismissed the claim. On appeal the Divisional Court reversed this decision, holding that the sale of the piano was fraudulent and amounted to a repudiation of the hire-purchase agreement, and put an end to the vendor's interest at the time it was made. The defendant appealed. *Cur. adv. vult.*

THE COURT allowed the appeal.

SWINFEN EADY, M.R., having read the hire-purchase agreement and stated the facts, continued: It must be remembered that the appeal given by section 120 of the County Courts Act, 1888, was an appeal on a question of law, and it was not open to the Divisional Court to take a different view of the facts, and to find that the sale was fraudulent, and amounted to a repudiation of the agreement. The fact that the vendor paid the next instalment due after the sale would certainly not seem to indicate any intention of repudiating the agreement, but in any case the issues of fact were for the county court judge. The first question was whether Mrs. Widlake had any interest under the hire-purchase agreement which she could lawfully assign. The plaintiffs insisted that the agreement merely amounted to a bailment which was ended by parting with the possession of the chattel bailed, and that the owner thereupon became entitled to its immediate return. It was not disputed that by virtue of the sale all the right, title and interest which Mrs. Widlake could dispose of passed to the defendant. At the date of the sale there had been no breach of the agreement, and there was not any present right in the plaintiffs to claim the return of the piano. The agreement was not only a letting to hire of a piano; it also conferred an option of purchase for a valuable consideration. Moreover, clause C showed that if for any breach of or default in the agreement the plaintiffs retook possession of the chattel, the hirer's interest was not thereby terminated, but the hirer had the right to resume the hiring on paying the arrears of hire up to the date of repossession and procuring a satisfactory guarantee. Parting with the possession of the piano would not be a breach of the agreement, if it remained in the flat and was not removed contrary to clause C. If Mrs. Widlake had let her flat furnished for three years, with the piano, the plaintiffs would not have been entitled on that account to retake the piano. The whole terms of the agreement shewed that the contract was not merely a bailment for reward, but that it conferred an interest in the chattel on the bailee. It did not amount to a contract for sale, as the hirer was not bound to purchase. But it conferred on the hirer an absolute right to purchase, on complying with the provisions of the agreement. The contract was, in his (his lordship's) opinion, assignable by the hirer, but the assignee could only retain possession of the chattel upon the terms of the contract. There was no right to remove the piano, nor had it been removed, from the flat. There was no reason whatever for supposing that any personal element entered into the mind of either of the parties to the agreement, or that it would make any difference to the plaintiffs by whom the obligations of the contract were fulfilled, or that there were any grounds for taking the contract out of the well-settled general rule that the benefit of a contract was assignable in equity, and could be enforced by the assignee (see *Tolhurst* v. *Associated Portland Cement Manufacturers* (1902, 2 K. B. 660; 1903, A. C. 414); and *British Wagon Co.* v. *Lea* (1880, 5 Q. B. D. 149)). The defendant, therefore, acquired all the interest of the vendor, and moreover had the right in equity to compel the vendor to pay the remaining instalments to the plaintiffs, and enforce for the benefit of the defendant all the rights conferred by clause C of the contract. It was urged by the respondents that no rights arose under clause C unless and until the piano had been actually and physically retaken and removed from the flat, and without legal process. The plaintiffs, however, were claiming possession of the piano in the action, and the Court would not go through the idle form of ordering it to be delivered up to them, if the defendant were entitled to an order for the immediate re-delivery of it to her. The arrears of hire and a substantial guarantee had been offered and refused, and it would be wrong to say, when the defendant was willing to comply with the provisions of clause C, that she could only become so entitled if she first suffered the inconvenience of a physical removal of the piano, thereby incurring expense. It followed that the true measure of damages recoverable by the plaintiffs was not the whole value of the piano (£28), but compensation for the loss actually suffered, or £18 17s. 5d. The appeal, therefore, would be allowed, the judgment of the Divisional Court reversed, and that of the county court judge restored.

WARRINGTON and DUKE, L.JJ., delivered judgment to the same effect, the former referring to *Belsize Motor Supply Co.* v. *Cox* (1914, 1 K. B. 244), and the latter to *Halliday* v. *Holgate* (1868, L. R. 3 Ex. 299).—COUNSEL, *McCall*, K.C., *S. H. Leonard*, and *P. S. P. Handcock; Schwabe*, K.C., and *Ernest Wetton*. SOLICITORS, *Peachey & Co.; H. E. Tudor.*

[Reported by H. LANGFORD LEWIS, Barrister-at-Law.]

High Court—Chancery Division.

HILL v. PETERS. Eve, J. 9th July.

MORTGAGE—PRIORITY—EQUITABLE REVERSIONARY INTEREST IN PERSONALTY—DECLARATION OF TRUST—EQUITABLE ASSIGNMENT—NOTICE—NEGLIGENCE.

The doctrine as to notice laid down in Dearle *v.* Hall (3 Russ. 1) *has no application to a beneficiary who has no right to possession himself, and who can only assert his claim to receive the fund through his trustee. It does not, therefore, apply to a declaration of trust which is not an equitable assignment.*

This was an action for a declaration of priority of the plaintiffs' mortgage. On 29th September, 1897, E. and H., solicitors, advanced to

S. Gotto the sum of £4,000 on the security of his one undivided fifth share in the residuary personal estate of his father, expectant on the death of his mother, who was still living. Notice of his mortgage was given to the trustees of the father's will on 13th October, 1897. On 18th October E. and H. executed a declaration of trust, declaring themselves trustees of the mortgage debt and security of 29th September for Mr. and Mrs. Peters as joint tenants, and covenanting to repay the £4,000 on two months' notice. On 14th January, 1907, E. and H., through the agency and with the assistance of two persons named Ponsford and Tompkins, raised the sum of £4,000 from Mrs. Gwyn, a widow, on the security of S. Gotto's one-fifth share, concealing from the mortgagee the declaration of trust and the fact that Tompkins had no interest in the property, although posing as the mortgagor, and that his apparent title was founded on a fictitious sale and assignment which never took place. In February, 1907, E. and H. paid off £2,000 to Mr. and Mrs. Peters. Mrs. Gwyn died in August, 1911, and the plaintiffs are her executors. In 1912 the plaintiffs obtained possession of the mortgage deed of 29th September, of the fictitious assurance to Tompkins, and of the mortgage to their testatrix. On 6th July, 1906, they gave notice of their mortgage to the trustee of Mr. Gotto's will, and six months later they heard for the first time of the declaration of trust.

EVE, J.—The plaintiffs rely upon four grounds to displace the priority of the defendant's mortgage; first, that Mr. and Mrs. Peters ought not to have appointed E. and H. their trustees; secondly, that they ought not to have left the security in the possession of the trustees; thirdly, that they ought to have insisted on notice being endorsed on the mortgage deed. There is another and fourth ground which I will deal with separately, but so far as the three grounds which I have enumerated are concerned, I do not consider there is any substance in them, and I am satisfied that there was no negligence on the part of Mr. and Mrs. Peters in not having the mortgage deed endorsed. The fourth ground upon which the plaintiffs rely is that Mr. and Mrs. Peters ought to have given notice of the declaration of trust or of their interest in the mortgage security to the trustees of the will of the elder Mr. Gotto. That ground is based upon the assertion that the transaction between E. and H. and Mr. and Mrs. Peters was in fact an equitable assignment, and not the creation of a trust; and, secondly, upon the wider ground that even if the true character of the transaction was the creation of a trust the title of the defendant and her husband as *cestuis que trust* under the declaration could only be perfected according to the rule in *Dearle* v. *Hall* (3 Russ. 1), by notice to the trustees of the will of the elder Mr. Gotto. No such notice having been given the plaintiffs' claim that their security, of which notice was given on 6th July, 1917, although posterior in date, is entitled to priority over that of the defendant. In my opinion, the declaration of trust was not an equitable assignment or transfer, but the creation of the relationship of trustee and *cestuis que trust* as between E. and H. and Mr. and Mrs. Peters. I see nothing to warrant me in treating the transaction as one of any other character or having any other effect. The proposition that the beneficiaries' title under the declaration required perfecting by notice is a very startling one, for which no authority has been cited, and which leads to this result, that, whenever trustees hold a *chose in action* of this nature as part of the trust estate, each of the beneficiaries must give notice of his beneficial interest therein, or run the risk of being deprived thereof by some fraudulent transaction between the trustee and an assignee who does give notice. I cannot see any reason for so extending the doctrine of *Dearle* v. *Hall* (3 Russ. 1), and I respectfully endorse the observations of Lord Macnaghten in *Ward* v. *Duncombe* (1893, A. C. 369) as to the undesirability of doing anything to extend that doctrine to cases not already covered by it. The principle on which the rule in *Dearle* v. *Hall* is founded, which regards the giving of notice by an assignee as the nearest approach to taking possession, has no application, in my opinion, to a beneficiary who has no right to possession himself, and who can only assert his claim to receive the fund through the trustee. I confess I could have followed a suggestion that Mr. and Mrs. Peters ought possibly to have given notice to S. Gotto, the mortgagor; but this naturally has not been advanced, as the plaintiffs themselves have not given any such notice, and, even had they done so, it would not, in my opinion, have availed to give priority to their subsequent security. I do not think there is any more substance in the point founded on *Dearle* v. *Hall* than in the other three points. The position, therefore, can be summed up shortly as follows: E. and H., trustees for the defendant of an equitable interest in personalty in fraud of their *cestuis que trust*, and for their own purposes, without disclosing the existence of the trust, purported to assign the interest by way of mortgage to the testatrix, and afterwards, in further breach of trust, handed over to her executors the instrument creating the interest. In so doing they have not displaced the defendants' priority: see *Cory* v. *Eyre* (1 D. J. & S. 149) and *Re Vernon, Ewens & Co.* (33 Ch. D. 406). The defendant has not done or omitted to do anything to forfeit that priority, and the *bonâ fides* of the testatrix, which is in no way impugned, does not avail to place her later equity in a superior position to the earlier one of the defendant. The result is that the action fails, and must be dismissed, with costs. The defendant is entitled on her counter-claim to a declaration of priority and the delivery up to her of the mortgage of 29th September, 1897, and the plaintiffs must pay the costs of the counter-claim.—COUNSEL, *Hewitt*, K.C., and *Alfred Adams*; *Clayton*, K.C., and *Whinney*. SOLICITORS, *Wrentmore & Son*, for *Waldron & Sons*, Cardiff; *Emmet & Co.*

[Reported by S. E. WILLIAMS, Barrister-at-Law.]

Re **CONSTABLE'S SETTLED ESTATES.** Sargant, J. 11th July.

SETTLEMENT—DISENTAILING DEED—RE-SETTLEMENT—TENANT FOR LIFE—RESTORATION OF THE LIFE ESTATE—EXTENDED POWERS UNDER THE RE-SETTLEMENT—TENANT FOR LIFE UNDER THE RE-SETTLEMENT—SETTLED LAND ACT, 1882 (45 & 46 VICT. c. 38), ss. 2, 20, 38, 40 AND 50.

Where, under a re-settlement, A's life estate as tenant for life under the old settlement was restored, and the re-settlement contained extended and enlarged powers,

Held, that A had not at the same time both his continuing life interest in the larger subject matter of the earlier settlement and a second present life interest in the smaller or more incumbered interest which was the subject matter of the re-settlement.

The case of Re Cornwallis-West and Munro's Contract (1903, 2 *Ch.* 150), *as explained in the case of* Re Lord Wimborne and Browne's Contract (1904, 1 *Ch.* 537), *is still good law.*

In this case it was admitted that the facts were substantially the same as in *Re Cornwallis-West and Munro's Contract* (*supra*), but an opposite decision was sought. The application was made by Colonel Constable for a declaration that he was tenant for life under a re-settlement of lands which were comprised in the settlement made by the will of Sir Aston Constable, under which Col. Constable was tenant for life, and that he could, as tenant for life under the re-settlement, exercise certain extended and enlarged powers thereby conferred. The tenancy in tail under the will had been barred, and Col. Constable's life estate restored under the re-settlement.

SARGANT, J., after stating the facts, in a considered judgment, said: The facts in this case are admitted to be substantially the same as those in *Re Cornwallis-West and Munro's Contract* (*supra*), but I am asked to decide the contrary of that decision. There were obvious objections to the decision in the *Cornwallis-West case*, while it was unexplained, but, as explained in the case of *Re Lord Wimborne and Browne's Contract* (*supra*), it has stood for some years without, so far as I know, any expression of judicial dissatisfaction, and has found its way into all the ordinary text books, and has been criticised by some (see Cyprian Williams on Vendors and Purchasers, 2nd ed., p. 314). In these circumstances, even if I was disposed to disagree with the decision in the *Cornwallis-West case*, I should have left it to a higher authority to override that decision if they thought fit. But, as explained in *Lord Wimborne's case*, it seems to be right, for the reason stated by Farwell, J. That reasoning I expand and apply to the present case in this way. Here, as in the *Cornwallis-West case* and in *Re Wright's Trustees and Marshall* (1884, 28 Ch. D. 93), the subject matter comprised in the re-settlement is different from that comprised in the prior settlement, inasmuch as in the process of re-settlement the estate settled became subject to the family charges under the earlier settlement; and the life estate under the earlier settlement has been expressly restored in order that the powers annexed to that life estate might be kept alive, and may in the language of the re-settlement here, have the same "over-reaching" effect as if the re-settlement had not been executed. I cannot hold that the applicant has at the same time both his continuing life interest in the larger subject matter of the earlier settlement, and a second present life interest in the smaller or more incumbered interest which was the subject matter of the settlement. The applicant has never got into the position occupied by the vendor in *Re Mundy and Roper's Contract* (1899, 1 Ch. 275) of being the tenant for life of the smaller subject matter settled by the re-settlement.—COUNSEL, *Harold Burrows*; *L. F. Potts*; *G. R. Northcote*. SOLICITORS, *Collyer-Bristow, Curtis, Booth, Birks & Langley*, for *Stamp, Jackson & Birks*, Hull.

[Reported by L. M. MAY, Barrister-at-Law.]

High Court—King's Bench Division.

WILLIAMSON FILM PRINTING CO. (LIM.) v. COMMISSIONERS OF INLAND REVENUE. Sankey, J. 27th June.

REVENUE—EXCESS PROFITS DUTY—REMUNERATION OF DIRECTORS—DEDUCTIONS—PRE-WAR STANDARD—DISCRETION OF COMMISSIONERS—APPEAL—FINANCE (No. 2) ACT, 1915 (5 & 6 GEO. 5, c. 89), SCHEDULE IV., PART I., CL. 5; s. 45, SUB-SECTION (5).

The discretion of the Commissioners of Inland Revenue is absolute under clause 5, *Part I., Schedule IV., of the Finance* (*No.* 2) *Act*, 1915, *in directing whether any, and what, amount of deduction shall be allowed beyond that in the last pre-war trade year, for the purpose of assessing excess profits duty where the remuneration of directors and persons concerned in the management of a business depends on profits; and section* 45 *of the Act gives no right of appeal against the decision of the Commissioners.*

Case stated by Special Commissioners for Income tax. The company appealed against an assessment of £3,216 10s. for excess profits duty for the year ending 31st March, 1915. In March, 1913, the company purchased the business of Mr. James Williamson, one of the terms of

purchase being that Williamson should be managing director for five years at a salary of £300, with a commission of 5 per cent. upon net profits after payment of dividend on Preference shares. On 1st October, 1914, Williamson's remuneration was increased to salary £500 and a commission of 10 per cent., the total remuneration paid to him for the accounting period—the year ending March, 1915—being £1,230. For the year ending 31st March, 1914, £398 was allowed as a deduction for Williamson's remuneration in arriving at the pre-war standard of the company's profits. In computing the company's profits for the accounting period in question, the deduction allowed was kept at the same sum. The Commissioners of Inland Revenue, under clause 5 of Part I. of Schedule IV. to the Finance (No. 2) Act, 1915, declined to direct any deduction beyond this. The Special Commissioners were of opinion that they had no power, in the absence of such direction, to allow any higher deduction. The company contended that there was an unrestricted right of appeal under section 45, sub-section (5), of the Finance (No. 2) Act, 1915. The Finance (No. 2) Act, 1915, clause 5 of Part I. of 4th Schedule, provides: "Any deduction allowed for the remuneration of directors, managers and persons concerned in the management of the trade or business shall not, unless the Commissioners of Inland Revenue, owing to any special circumstances, or to the fact that the remuneration of any managers or managing directors depends on the profits of the trade or business, otherwise direct, exceed the sums allowed for those purposes in the last pre-war trade year or a proportionate part thereof, as the case requires; and no deduction shall be allowed in respect of any transaction or operation of any nature, where it appears, or to the extent to which it appears, that the transaction or operation has artificially reduced the amount to be taken as the amount of the profits of the trade or business for the purposes of this Act." Section 45, sub-section (5) provides: "Any person who is dissatisfied with the amount of any assessment made upon him by the Commissioners of Inland Revenue under this part of this Act may (except in cases where a special right of appeal is given under this part of this Act) appeal to the General Commissioners for the division in which he is assessed or to the Special Commissioners, and those Commissioners shall have power on any appeal, if they think fit, to summon witnesses and examine them upon oath. . . ."

SANKEY, J.—In this case the Special Commissioners have refused to entertain the appeal from the determination of the Commissioners of Inland Revenue not to direct the deduction of a greater amount than £398, the sum allowed for deduction in the last pre-war trade year. The company relied on section 45 of the Finance (No. 2) Act, 1915, sub-section (5), which gives an appeal to the General or Special Commissioners. It was argued that this gave the widest possible right of appeal. He had to consider the meaning of clause 5 of the first part of the Fourth Schedule. The phrasing was somewhat redundant, and the whole clause was peculiarly expressed; but it appeared to amount to a definite prohibition of making deductions without the direction of the Commissioners. Putting this negative conclusion positively, the meaning was that such a direction was a condition precedent to the allowance of the deduction, and that the discretion of the Commissioners was absolute and unappealable. If otherwise, the Crown would be able to appeal from the Commissioners and assert its power to tax the subject; and there were other cases where the Commissioners were the final judges. His view followed that of the Court of Appeal in *The King* v. *Commissioners of Inland Revenue* (1918, 1 K.B. 143), where Swinfen Eady, L.J., observed that it was clear no deduction was to be allowed exceeding the pre-war rate unless the Commissioners directed. Appeal dismissed.—COUNSEL, *Sylvain Mayer*, K.C., and *A. M. Latter*, for the company; *The Solicitor-General* (*Sir Gordon Hewart*, K.C.), and *T. H. Parr*, for the Crown. SOLICITORS, *Billinghurst, Wood, & Pope; The Solicitor of Inland Revenue.*

[Reported by G. H. KNOTT, Barrister-at-Law.]

Solicitors' Cases.

Solicitors Ordered to be Struck Off the Rolls.

July 24.—HERBERT BLISS HILL; WILLIAM FREDERICK HOOPER; GEOFFREY EVANS PICKERING.

Solicitor Ordered to be Suspended.

July 24.—JOSEPH SCOTT, Carlton House, Regent-street, ordered to be suspended for three years.

New Orders, &c.

High Court of Justice.

LONG VACATION, 1918.

NOTICE.

During the Vacation, up to and including Saturday, 31st August, all applications "which may require to be immediately or promptly heard" are to be made to the Hon. Mr. Justice ROCHE.

COURT BUSINESS.—The Hon. Mr. Justice ROCHE will, until further notice, sit in the Lord Chief Justice's Court, Royal Courts of Justice, at 10.30 a.m., on Wednesday in every week, commencing on Wednesday, 7th August, for the purpose of hearing such applications, of the above nature as, according to the practice in the Chancery Division, are usually heard in court.

No case will be placed in the Judge's Paper unless leave has been previously obtained, or a certificate of counsel that the case requires to be immediately or promptly heard, and stating concisely the reasons, is left with the papers.

The necessary papers, relating to every application made to the Vacation Judges (see notice below as to Judge's Papers), are to be left with the cause clerk in attendance, Chancery Registrars' Office, Room 136, Royal Courts of Justice, before 1 o'clock two days previous to the day on which the application is intended to be made. When the cause clerk is not in attendance, they may be left at Room 136, under cover, addressed to him, and marked outside Chancery Vacation Papers, or they may be sent by post, but in either case so as to be received by the time aforesaid.

URGENT MATTERS WHEN JUDGE NOT PRESENT IN COURT OR CHAMBERS.—Application may be made *in any case of urgency*, to the Judge, personally (if necessary), or by post or rail, prepaid, accompanied by the brief of counsel, office copies of the affidavits in support of the application, and also by a Minute, on a separate sheet of paper, signed by counsel, of the order he may consider the applicant entitled to, and also an envelope, sufficiently stamped, capable of receiving the papers, addressed as follows:—"Chancery Official Letter: To the Registrar in Vacation, Chancery Registrars' Office, Royal Courts of Justice, London, W.C. 2."

On applications for injunctions, in addition to the above, a copy of the writ, and a certificate of writ issued, must also be sent.

The papers sent to the Judge will be returned to the registrar.

The address of the Vacation Judge can be obtained on application at Room 136, Royal Courts of Justice.

CHANCERY CHAMBER BUSINESS.—The chambers of Justices NEVILLE and ASTBURY will be open for Vacation business on Tuesday, Wednesday, Thursday, and Friday in each week from 10 to 2 o'clock.

KING'S BENCH CHAMBER BUSINESS.—The Hon. Mr. Justice ROCHE will, until further notice, sit for the disposal of King's Bench business in Judge's Chambers at 10.30 a.m. on Tuesday in every week, commencing on Tuesday, the 6th August.

PROBATE AND DIVORCE.—Summonses will be heard by the Registrar at the Principal Probate Registry, Somerset House, every day during the Vacation at 11.30 (Saturdays excepted).

Motions will be heard by the Registrar on Wednesdays, the 14th and 28th of August, the 11th and 25th September, at the Principal Probate Registry, at 12.30.

Decrees will be made absolute on Wednesdays, the 7th and 21st of August, the 4th and 18th of September, and the 2nd of October.

All papers for motions and for making decrees absolute are to be left at the Contentious Department, Somerset House, before 2 o'clock on the preceding Friday.

The offices of the Probate and Divorce Registries will be opened at 10 a.m. and closed at 4 p.m., except on Saturdays, when the offices will be opened at 10 a.m. and closed at 1 p.m.

JUDGE'S PAPERS FOR USE IN COURT.—CHANCERY DIVISION.—The following papers for the Vacation Judge are required to be left with the cause clerk in attendance at the Chancery Registrar's office, Room 136, Royal Courts of Justice, on or before 1 o'clock, two days previous to the day on which the application to the Judge is intended to be made:—

1.—Counsel's certificate of urgency or note of special leave granted by the Judge.

2.—Two copies of writ and two copies of pleadings (if any), and any other documents showing the nature of the application.

3.—Two copies of notice of motion.

4.—Office copy affidavits in support, and also affidavits in answer (if any).

N.B.—Solicitors are requested when the application has been disposed of to apply at once to the Judge's clerk in court for the return of their papers.

VACATION REGISTRAR.—Mr. JOLLY (Room 166).

Supreme Court, England (Procedure).

THE RULES OF THE SUPREME COURT (COSTS No. 2), 1918.

INCREASE OF COSTS.

We, the Rule Committee of the Supreme Court, hereby make the following Rules:—

1. The charges specified in Clause No. 106 of Appendix N of the Rules of the Supreme Court as payable during the continuance of the present war and for a period of six months thereafter shall be further increased from 1s. 10d. to 2s. 1d.

2. Order 66, Rule 7c, shall be amended by increasing the payments therein specified to 1½d. for every copy.

3. Where any account or charge to which these Rules apply shall result in a fraction of 1d. in the total, the said fraction shall be reckoned as 1d.

4. These Rules may be cited as the Rules of the Supreme Court (Costs No. 2), 1918.

Dated the 5th day of September, 1918.

This is the Notice as sent to us. As printed in the *London Gazette* of 26th July it concludes as follows:—

And we, the said Rule Committee, hereby certify that on account of urgency the said Rules should come into immediate operation, and we hereby make the said Rules to come into operation forthwith as Provisional Rules.

Dated the 22nd day of July, 1918.

THE RULES OF THE SUPREME COURT, 1918.

We, the Rule Committee of the Supreme Court, hereby make the following Rule:—

ORDER LXV.

Application of Order LXV., Rule 10a, to proceedings on the Crown side of the King's Bench Division.]—The following paragraph shall be added to the end of Rule 10A of Order LXV., viz.:—

"This Rule shall apply to all references to arbitration and to all proceedings on the Crown side and to all proceedings assigned to the Crown Office Department except criminal proceedings on information or on indictments moved into or found or presented in the King's Bench Division of the High Court of Justice."

And we, the said Rule Committee, hereby certify that on account of urgency the said Rule should come into immediate operation, and we hereby make the said Rule to come into operation forthwith as a Provisional Rule.

Dated the 22nd day of July, 1918.

COUNTY COURT RULE, DATED 22ND JULY, 1918, AMENDING RULE 9 OF THE COUNTY COURT (REGISTRATION APPEALS) RULES, 1918.

Time for hearing appeals.]—The words "the ninth and the twenty-eighth days of September" shall be substituted for the words "the second and the twenty-first days of September" in paragraph 3 of Rule 9 of the County Court (Registration Appeals) Rules, 1918.

22nd July.

NOTE.—This alteration has become necessary in consequence of the postponement by the Local Government Board of the latest dates fixed for objections to the electors lists, and for claims and objections to claims, under the Representation of the People Act, 1918. The dates have been postponed for eight days, and as the result it will be practically impossible for requests for the entry of appeals to reach the county courts in time for the hearing of appeals to be fixed before September 9th, instead of September 2nd, as was contemplated when the registration appeal rules were made.

War Orders and Proclamations, &c.

The *London Gazette* of 26th July contains the following:—

1. An Order in Council, dated 26th July, making additions to the Statutory List under the Trading with the Enemy (Extension of Powers) Act, 1915, as follows:—

Argentine, Paraguay, and Uruguay (9); Brazil (6); Chile (2); Costa Rica (6); Cuba (9); Ecuador (1); Guatemala (4); Netherlands (1); Netherland East Indies (8); Panama (2); Peru (3); Spain (3); Sweden (5).

2. A Notice that certain names have been added to the list of persons and bodies of persons to whom articles to be exported to China and Siam may be consigned.

3. A General Instruction of the Home Secretary under Defence of the Realm Reg. 14G. as to ports and routes for passengers from Great Britain to Ireland.

4. A Notice, dated 26th July, that the Board of Trade intends to take possession through the Controller of Timber Supplies of all descriptions of sawn and planed soft wood (excluding box shooks) arriving in the United Kingdom on and after 22nd July.

5. A Notice under the Corn Production Act, 1917, of a proposal of the Agricultural Wages Board (England and Wales) to fix minimum rates of wages for Pembroke, Carmarthen, and Cardigan.

6. Admiralty Notices to Mariners as follows:—

(1) No. 881 of 1918 (revising No. 576 of 1918) relating generally to England and Wales, South and West Coasts. Amongst a multitude of regulations fishermen are warned to give mine-sweepers a wide berth, and to exercise the greatest caution when fishing. No vessels other than those of British nationality or those of the Allied Nations are permitted to enter the Port of Plymouth.

(2) No. 890 of the year 1918 (revising No. 39 of 1918) relating to England, East Coast. The prohibition just mentioned is applied to the Port of Lowestoft and to Yarmouth Haven.

The *London Gazette* of 30th July contains the following:—

7. The Order in Council, dated 30th July, further amending the Proclamation dated the 10th day of May, 1917, and made under Section 8 of the Customs and Inland Revenue Act, 1879, and Section 1 of the Exportation of Arms Act, 1900, and Section 1 of the Customs (Exportation Prohibition) Act, 1914, whereby the exportation from the United Kingdom of certain articles to certain or all destinations was prohibited. It is now provided as follows:—

The goods mentioned in the Schedule to the Proclamation of the 10th day of May, 1917, as amended and added to by subsequent Orders of Council and marked "(C)" which are at present prohibited to be exported to all destinations in European and Asiatic Russia and in other foreign countries in Europe and on the Mediterranean, except France and French Possessions, Italy and Italian Possessions, Spain and Portugal, and to all ports in any such foreign countries, shall be prohibited to be exported to all destinations in European and Asiatic Russia and in other foreign countries in Europe and on the Mediterranean, except France and French Possessions, Italy and Italian Possessions, and Portugal, and to all ports in any such foreign countries.

8. A further Notice that licences under the Non-Ferrous Metal Industry Act, 1918, have been granted to certain companies, firms, and individuals.

9. Notices by the Agricultural Wages Board (England and Wales) under the Corn Production Act, 1917, as follows:—

Minimum rates fixed for male workmen in Derbyshire, in Cumberland and Westmorland, and the Furness District of Lancashire; in Norfolk; in each case as from 5th August.

Proposal to fix rates of wages for carters, cowmen, and shepherds in Wiltshire.

Proposal to fix rates of wages for overtime in Herefordshire.

Proposal to fix minimum rates of wages for Northumberland and Durham and for Denbigh and Flint.

Proposal to fix minimum rates of wages for sheep-tenders and bullock-tenders in Norfolk.

Notice of an Order proposed to be made under Section 12 (1) (B) of the above Act with respect to "benefits or advantages."

Orders in Council.

NEW DEFENCE OF THE REALM REGULATIONS.

[Recitals.]

It is hereby ordered that the following amendments be made in the Defence of the Realm Regulations:—

Cultivation of Land.

1. Regulation 2L shall be amended as follows:—

"(1) In sub-section (1) there shall be inserted after the words 'cultivate the land' the words 'or use the land (including any buildings or erections thereon) for the keeping or breeding of live-stock, poultry, or bees' and after the word 'cultivation' the words 'or use as aforesaid.'

"(2) In sub-section (2) for the words 'or for adapting the land to cultivation including fencing' there shall be substituted the words 'or its use as aforesaid or for adapting the land to cultivation or to such use as aforesaid including the erection of fences or buildings,' and for the words 'such fencing or work of adaptation' there shall be substituted the words 'fence, building or other work erected or constructed under this provision.'

"(3) In sub-section (3) after the word 'cultivates' there shall be inserted the words 'or uses,' and the word 'twenty' shall be substituted for 'nineteen.'

"(4) In paragraph (ii) of sub-section (8) there shall be inserted after the words 'the land or any part thereof' the words 'or use the land (including any buildings or erections thereon) or any part thereof for the keeping or breeding of live-stock, poultry or bees' and after the word 'cultivation' the words 'or use as aforesaid.'"

Motor Car Drivers.

2. After Regulation 8D the following regulations shall be inserted:—

"8DD. (1) Notwithstanding anything in the Motor Car Act, 1903, a licence limited to the driving of a motor car other than a heavy motor or a public service vehicle may be granted under that Act to a male person who has attained the age of sixteen years but has not attained the age of seventeen years, if the authority granting the licence are satisfied that he is competent to drive such a motor car.

"(2) The provisions of the Motor Car Act, 1903, and the regulations made thereunder which relate to the licensing of a motor car driver and a licence to drive a motor car shall apply to the licensing of a driver and a licence granted in pursuance of this regulation subject to such modifications as are required to render the said provisions and regulations applicable to a licence limited as aforesaid.

"(3) For the purpose of this regulation—

(a) the expression 'heavy motor car' means a motor car exceeding two tons in weight unladen; and

(b) the expression 'public service vehicle' means any motor car licensed to ply for hire as a hackney carriage or stage carriage."

Holding of Meetings.

3. In paragraph (*a*) of sub-section (1) of Regulation 9AA the words "(including fairs and markets)" shall be inserted after the word "assemblies."

Immorality.

4. In Regulation 13A after the words "His Majesty's Forces" there shall be inserted the words "or of the forces of any of His Majesty's Allies."

Change of Name.

5. After Regulation 14G the following regulations shall be inserted:—

"14H. (1) A person not being a natural born British subject shall not for any purpose assume or use, or purport to assume or use, or continue after the nineteenth day of August, nineteen hundred and eighteen, the assumption or use of, any name other than that by which he was ordinarily known at the date of the commencement of the war, and if he does so, he shall be guilty of a summary offence against these regulations.

"(2) Where any such person as aforesaid carries on, or purports or continues to carry on, or is a member of a partnership or firm which carries on, or which purports or continues to carry on, any trade or business in any name other than that under which the trade or business was carried on at the date of the commencement of the war he shall for the purpose of this regulation be deemed to be using, or purporting or continuing to use, a name other than that by which he was ordinarily known at the date of the commencement of the war.

"(3) A Secretary of State may, if it appears desirable in any particular case, grant an exemption from the provisions of this regulation.

"(4) Nothing in this regulation shall—

(*a*) affect the assumption or use, or continued assumption or use, of any name in pursuance of a Royal Licence; or

(*b*) affect the continuance of the use, until the decision of the Secretary of State has been given, of a name in respect of which an application for exemption is made before the nineteenth day of August, nineteen hundred and eighteen; or

(*c*) prevent the assumption or use by a married woman of her husband's name."

War Material.

6. After Regulation 30A the following regulation shall be inserted:—

"30AA. If any person without lawful authority incites or induces any other person whether or not such other person is in the United Kingdom to do any act outside the United Kingdom calculated to increase the cost in the United Kingdom of war material, he shall, unless he proves to the satisfaction of the court that the act was not intended to increase the cost, be guilty of an offence against these regulations."

Military Areas, &c.

7. In Regulation 35C, after the words "His Majesty's Forces," wherever those words occur, there shall be inserted the words "or of the forces of any of His Majesty's Allies."

Supply of Shipping.

8. After Regulation 39B the following regulation shall be inserted:—

"39BB. (1) The Shipping Controller, after consultation with a Secretary of State and the Board of Trade, may, in so far as it appears necessary so to do for the purpose of providing and maintaining an efficient supply of shipping and thereby furthering the successful prosecution of the war, make orders modifying or suspending the operation of any such provisions contained in any bye-laws made under the Petroleum Acts, 1871 to 1881, as prohibit, or in any manner restrict, whether directly or indirectly, the discharge of petroleum from a ship by means of the ship's own steam.

"(2) Any order made under this regulation may contain provisions requiring the master and members of the crew of a ship from which petroleum is being or is to be discharged and any other persons in any way engaged or concerned in the discharge of petroleum from a ship to comply with such rules as may be specified in the order, and if any person, being a person required to comply therewith, fails to comply with any such rules, he shall be guilty of a summary offence against these regulations.

"(3) Any order made under this regulation may be revoked, extended, or varied as occasion requires.

"(4) In the application of this regulation to Scotland, the Secretary for Scotland, and in the application of this regulation to Ireland the Lord Lieutenant, shall be substituted for a Secretary of State."

Venereal Disease.

9. In Regulation 40D after the words "His Majesty's Forces," wherever those words occur, there shall be inserted the words "or of the forces of any of His Majesty's Allies."

Certificates of Exemption.

10. Regulation 41AA is hereby revoked.

Seditious Use of Premises.

11. In Regulation 51C after the words "are being" there shall be inserted the words "or are about to be."

19th July. [*Gazette*, 26th July.

ALIENS RESTRICTION ORDER.

[Recitals.]

It is hereby ordered, as follows:—

1. The following Article shall be inserted after Article 20D:—

"20E. (1) An alien (wherever resident) shall have in his possession an identity book obtained in pursuance of this Order and duly filled in and attested:

"Provided that—

(*a*) a Secretary of State may exempt from the provisions of this Article any class of aliens, where he is satisfied that satisfactory means are provided for their identification, other than the possession of an identity book; and

(*b*) an alien coming from any place out of the United Kingdom and landing in the United Kingdom without an identity book may, subject to the provisions of this Order, be allowed to proceed to his destination in the United Kingdom if the passport or other document with which he is required to be furnished on landing in the United Kingdom contains, or if he supplies, such of the particulars required to be contained in an identity book as may be required by an aliens officer; but any such alien shall proceed directly to his destination, and on arriving there shall, within twenty-four hours, comply with all the provisions of this Order which are applicable to him; and

(*c*) this Article shall not apply to an alien who appears to be under the age of eighteen and is in the care of some other person who is over that age.

3. This Order shall have effect as from the first day of October, nineteen hundred and eighteen.

19th July. [*Gazette*, 26th July.

Foreign Office Order.

REVOCATION OF LICENCE TO APPLY ON BEHALF OF PERSONS ON THE STATUTORY LIST, FOR LETTERS PATENT, TRADE MARKS AND DESIGNS.

To all whom it may concern:—

Whereas by a Licence dated the 13th day of April, 1917, permission was given to every person or body of persons, incorporated or unincorporated, resident, carrying on business, or being in the United Kingdom, to apply, on behalf of any person or body of persons whose name then was or should thereafter be placed on the Statutory List of persons with whom trading is forbidden by any Proclamation issued

under the Trading with the Enemy (Extension of Powers) Act, 1915, for the grant or for the renewal of the grant, of any Letters Patent, or for the registration, or for the renewal of the registration, of any Trade Mark or Design, in the United Kingdom or in certain parts of His Majesty's Dominions on the said licence specified, and, for that purpose, to transact all business necessary for the purposes of the application.

And whereas it appears to me that the matters and things allowed by the said licence should no longer be permitted.

Now, therefore I, Ernest Murray Pollock, . . . Controller of the Foreign Trade Department of the Foreign Office, in pursuance of the authority given me in this behalf by His Majesty's Principal Secretary of State for Foreign Affairs, hereby, on behalf of His Majesty, revoke the Licence so given on the 13th day of April, 1917, and give notice that all matters and things, which were by the said Licence permitted, are from the date hereof prohibited by the Trading with the Enemy (Extension of Powers) Act, 1915, and the Proclamation issued thereunder.

ERNEST M. POLLOCK.

Foreign Office, Foreign Trade Department.
27th July, 1918. [*Gazette*, 30th July.

Agriculture and the Losses Commission.

In the House of Lords, on the 25th July, say the *Times*, Earl Fortescue asked whether arrangements would be made by the Losses Commission to hear locally cases affecting agricultural properties.

Lord Hylton, replying for the Government, explained that the Commission held very strongly that they were not responsible to the Government as to the localities where they should sit, and that there was no necessity to have sittings in different parts of the country for the purpose of hearing cases locally. They considered that it would involve a considerable waste of time.

Lord Terrington, speaking as chairman of the Commission, mentioned that agricultural cases formed only about one-sixth of the number of cases that came before the Commission, and that it would be impossible for the Commissioners to perambulate the country without causing great delay. The cases were heard in the order in which they were set down, and claimants knew the hour and the day on which they would be required to attend. No class in the community had been more carefully considered than the agriculturists, and he was informed that no complaints had been received on behalf of the members of that industry.

Income Tax Bill.

In the House of Lords on Monday, says the *Times*, the Lord Chancellor, in moving that the House should go into Committee to consider the Income Tax Bill, said the measure was one to consolidate and reduce to order the various provisions relating to the income-tax, which hitherto had been scattered about in different Acts. He reminded their lordships that after it had been read a second time the Bill was referred to a Joint Committee of both Houses. That Committee had done their work with great patience and care, under the chairmanship of Lord Loreburn, to whom and to all the members of the Committee he expressed his warmest thanks. Their labours had produced order out of chaos, and the Bill now formed a compendious statement of the existing law relating to the income-tax presented in a form and in language intelligible to the taxpayer as well as to the officials concerned. Difficulties had arisen in regard to the question whether the word "person" used in regard to the right of abatement should be understood to include a corporation. It had been decided by the House of Lords, as regards an unincorporated body; but the question as it affected a corporation had not been decided by the highest Court. The Joint Committee intimated that in their opinion the word was not intended to include a corporation, but they had not embodied an alteration to that effect in the Bill, contenting themselves with recommending that, if it should be thought fit, the House of Commons should insert an amendment setting out clearly the application of the right of abatement to individuals.

The House then went into Committee, and agreed to the amendments as embodied in the Bill. The Bill as amended was reported to the House and read a third time and passed.

Valuation of Land.

In the House of Lords on Wednesday, says the *Times*, the Earl of Donoughmore (Chairman of Committees), in calling attention to the Reports of the Acquisition of Powers Sub-Committee, and the First Report of the Committee dealing with the law and practice relating to the Acquisition and Valuation of Land for public purposes, which had been presented to Parliament by the Ministry of Reconstruction, said, although the latter Committee took no evidence, they had condemned the Private Bill business as carried out in their lordships' House and made a series of recommendations which were quite impracticable, and would only result in chaos if adopted. He traversed many of the statements contained in the Report, and assured their lordships that impossible proposals were made by the Committee.

Viscount Peel remarked that the Committee, of which Mr. Leslie Scott, K.C., M.P., was the chairman, was not appointed solely for the purpose of recommending changes in Parliamentary procedure, and the Report to which attention had been directed would be followed by others dealing with various branches of the subject. The promoters of Bills relating to the acquisition of land for public purposes had a right to have their point of view considered, for under the present system they were put to considerable expense in connection with the hearing of counsel and expert witnesses before Private Bill Committees of both Houses. There was no objection to the letters and memorandum being printed as requested.

The Earl of Selborne said the consensus of opinion in favour of the Committee's Report was very remarkable. The Surveyors' Institution had said that there was not a single word that they wanted altered or omitted.

It was then agreed to print and circulate the papers and memorandum relating to the matter.

Legal News.

Appointment.

Mr. ARTHUR BLACKMAN, solicitor, Gresham House, Old Broad-street, E.C., chairman of the Urban District Council and also of the Local Tribunal, Sidcup, &c., has been appointed a justice of the peace for the County of Kent. Mr. Blackman was admitted in 1889.

Changes in Partnerships.

Business Changes.

We are informed that Messrs. FRESHFIELD have changed their firm's name to Freshfield and Leese, and that the partners in the firm are now Edwin Freshfield, LL.D., Edwin Hanson Freshfield, James William Freshfield, Sir William Hargreaves Leese, Bart., Scott Arnott, and Lancelot Christopher Lowther.

General.

The following resolution was passed unanimously by the annual representative meeting of the British Medical Association:—"That this